

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 27 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 SECTION 1. IC 27-10-2-3 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) An
5 undertaking is valid if it states:
6 (1) the court where the defendant is to appear;
7 (2) the amount of the bail; and
8 (3) that it was made before an official legally authorized to take
9 the bond.
10 (b) A surety remains liable on an undertaking despite:
11 (1) any lack of the surety's qualifications as required by section
12 4 of this chapter;
13 (2) any other agreement that is expressed in the undertaking;
14 (3) any failure of the defendant to join in the undertaking; or
15 (4) any other defect of form or record, or any other
16 irregularity, except as to matters covered by subsection (a).
17 (c) Any undertaking written after August 31, 1985, shall expire
18 thirty-six (36) months after it is posted for the release of a defendant
19 from custody. This section does not apply to cases in which a bond
20 has been declared to be forfeited, ~~or in which the defendant is a~~
21 ~~fugitive from the jurisdiction after thirty-six (36) months. and the~~
22 **surety and bail agent have been notified as described in section 12**
23 **of this chapter.**
24 SECTION 2. IC 27-10-2-4 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. Every surety for the release of a person on bail **under this chapter or IC 35-33-8-3.2(a)(2)** shall be qualified as:

(1) an insurer as defined and meeting the qualifications prescribed in IC 27-1-5-1, and represented by a bail agent as defined in and meeting the qualifications prescribed in this article; or

(2) a person who:

(A) has reached the age of eighteen (18) years;

(B) is a citizen of the United States;

(C) has been a bona fide resident of Indiana for at least one (1) year immediately preceding the execution of the bond;

(D) is related to the person for whom release on bail is sought within the third degree of affinity; and

(E) owns real or tangible personal property in Indiana with a net asset value that is acceptable to the proper authority approving the bond.

SECTION 3. IC 27-10-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) The court shall give the bail agent or insurer ~~legal~~ **written** notice of the defendant's trial or hearing **for purposes of entering a plea** at least seventy-two (72) hours before the defendant's appearance is required unless the appearance is scheduled within seventy-two (72) hours from the execution of the bond.

(b) The defendant's failure to appear constitutes a breach of the undertaking. The court before which the cause is pending shall make a record of the breach at which time section 12 of this chapter then applies.

SECTION 4. IC 27-10-2-10, AS AMENDED BY P.L.2-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) Recognizances for the appearance of prisoners shall in all cases and in all courts be in writing, be taken with at least one (1) resident freehold surety or be secured by a surety company, and be substantially in the following form:

STATE OF INDIANA)
) SS:
COUNTY OF _____)
State of Indiana.

vs.

John Doe

We, A B and C D, jointly and severally acknowledge ourselves bound to the state of Indiana in _____ dollars. If A B (the prisoner) shall appear on the ____ day of _____, 20____, in the _____ court, to answer a charge of (here state the offense) and from day to day and from term to term thereof, and abide the order of the court until the cause is determined and not depart therefrom without leave, then this recognizance shall be void, else to remain in full force.

If the above named defendant does not appear at any time fixed in

1 this bond, the court shall order CD (the surety) to produce the
 2 defendant. The court shall mail notice of this order to CD, the surety
 3 at _____ and _____ in _____ county and state of
 4 Indiana. If the surety does not produce the defendant, and does not
 5 pay all costs and late surrender fees in compliance with
 6 IC 27-10-2-12, the court shall, three hundred sixty-five (365) days
 7 after the mailing of the above notice to the surety, declare the bond
 8 forfeited, enter judgment forthwith against the surety, and certify the
 9 judgment to the clerk for record. Such forfeiture shall be without
 10 pleadings and without change of judge or change of venue. The
 11 obligors on such bond may appeal to the ruling of the court and
 12 appeal to the court of appeals as in other civil cases, and on appeal
 13 the evidence may be reviewed. Execution shall issue forthwith to the
 14 sheriff against the properties of each of us to be levied as other
 15 executions are levied.

16 Witness our hand and seals this ____ day of _____, 20____.

17 A B _____ (SEAL)

18 C D _____ (SEAL)

19 taken and approved this ____ day of _____, 20____.

20 _____
 21 (Officer taking surety)

22 Affidavits shall be taken from each personal surety
 23 substantially as follows:

24 State of Indiana _____)

25 County of _____)

26 I, C D, being duly sworn, on oath say, that I am worth in my
 27 personal rights and name, over and above all debts and liabilities of
 28 any and every kind, not less than _____ dollars, and that I possess
 29 real estate in my own name, located in the above-named county,
 30 which is worth over and above all encumbrances and liens, more than
 31 _____ dollars; that I am surety on the following recognizance bonds
 32 and none other, aggregating the total amount of _____ to-wit:
 33 (Here name bonds and amounts, if any) _____, And that I am not
 34 surety on any recognizance bond of any kind in any court which bond
 35 has been forfeited which judgment remains unpaid.

36 C D _____ (SEAL)

37 Subscribed and sworn to before me, this ____ day of
 38 _____, 20____.

39 _____
 40 (Officer administering oath)

41 (b) Printed forms of the above bonds shall be kept by all clerks of
 42 court that are authorized by law to admit prisoners to bail and shall
 43 be supplied by the clerks to sheriffs.

44 (c) For the purposes of this article, a cause is determined when a:

45 (1) judgment of conviction or acquittal is entered; ~~for a~~
 46 ~~misdemeanor;~~

47 (2) judgment is withheld; ~~in a misdemeanor case;~~

48 ~~(3) judgment of acquittal is entered in a felony case;~~

49 ~~(4) sentence is imposed in a felony case; or~~

(5) (3) defendant has been ordered or admitted to a diversion program.

SECTION 5. IC 27-10-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 12. (a) **Only** If a defendant does not appear as provided in the bond:

(1) the court shall:

(A) issue a warrant for the defendant's arrest; and

(B) order the bail agent and the surety to surrender the defendant to the court immediately;

(2) the clerk shall, **less than thirty (30) days after the defendant's failure to appear**, mail notice of the order to both:

(A) the bail agent; and

(B) the surety;

at each of the addresses indicated in the bonds; and

(3) if the defendant later is arrested or otherwise appears:

(A) the court shall order that the surety be released from the bond; and

(B) after the court issues an order under clause (A), the surety's original undertaking shall be reinstated if the surety files a written request for the reinstatement of the undertaking with the court.

This subsection may not be construed to prevent a court from revoking or resetting bail.

(b) The bail agent or surety must:

(1) produce the defendant; or

(2) prove within three hundred sixty-five (365) days:

(A) that the appearance of the defendant was prevented:

(i) by the defendant's illness or death;

(ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States or a state; ~~or~~

(iii) because the required notice was not given; **or**

(iv) because authorities have failed or refuse to extradite the defendant, through evidence satisfactory to the court; and

(B) the defendant's absence was not with the consent or connivance of the sureties.

(c) If the bail agent or surety does not comply with the terms of subsection (b) within one hundred twenty (120) days after the mailing of the notice required under subsection (a)(2), a late surrender fee shall be assessed against the bail agent or surety as follows:

(1) If compliance occurs more than one hundred twenty (120) days but not more than one hundred eighty (180) days after the mailing of notice, the late surrender fee is twenty percent (20%) of the face value of the bond.

(2) If compliance occurs more than one hundred eighty (180) days but not more than two hundred ten (210) days after the mailing of notice, the late surrender fee is thirty percent (30%)

1 of the face value of the bond.

2 (3) If compliance occurs more than two hundred ten (210) days
3 but not more than two hundred forty (240) days after the
4 mailing of notice, the late surrender fee is fifty percent (50%)
5 of the face value of the bond.

6 (4) If compliance occurs more than two hundred forty (240)
7 days but not more than three hundred sixty-five (365) days after
8 the mailing of notice, the late surrender fee is eighty percent
9 (80%) of the face value of the bond.

10 (5) If the bail agent or surety does not comply with the terms of
11 subsection (b) within three hundred sixty-five (365) days of the
12 mailing of notice required under subsection (a)(2), the late
13 surrender fee is eighty percent (80%) of the face value of the
14 bond.

15 All late surrender fees are due as of the date of compliance with
16 subsection (b) or three hundred sixty-five (365) days after the mailing
17 of notice required under subsection (a)(2), whichever is earlier, and
18 shall be paid by the surety when due. If the surety fails to pay, then
19 the late surrender fees shall be paid by the commissioner as provided
20 in subsection (f).

21 (d) If the bail agent or surety does not comply with the terms of
22 subsection (b) within three hundred sixty-five (365) days of the
23 mailing of notice required by subsection (a)(2), the court shall
24 declare forfeited an amount equal to twenty percent (20%) of the face
25 value of the bond. The court shall immediately enter judgment on the
26 forfeiture, without pleadings and without change of judge or change
27 of venue, and assess against the bail agent or surety all actual costs
28 resulting from the defendant's failure to appear. These costs include
29 jury fees, witness fees, and any other documented costs incurred by
30 the court.

31 (e) Proceedings relative to the bond, forfeiture of a bond,
32 judgment on the forfeiture, execution of judgment, or stay of
33 proceedings shall be in the court in which the bond was posted. Costs
34 and late surrender fee assessed against a bail agent or surety under
35 subsection (c) shall be satisfied without further order of the court as
36 provided in subsection (f). The court may waive the late surrender
37 fee or extend the period for payment beyond the statutorily permitted
38 period, or both, if the following conditions are met:

39 (1) A written request is filed with the court and the prosecutor.

40 (2) The surety or bail agent provides evidence satisfactory to the
41 court that diligent efforts were made to locate the defendant.

42 (f) In the case of an insurer, if the fees, costs, or judgment is not
43 paid, then the clerk shall mail the notice to the commissioner. The
44 commissioner shall:

45 (1) within ten (10) days of receipt of the notice forward a copy
46 by certified mail to the insurer;

47 (2) forty-five (45) days after receipt of the notice from the clerk,
48 if the commissioner has not been notified by the clerk that the
49 fees or judgment or both have been paid, pay the late surrender

1 fee assessment, costs, and any judgment of forfeiture ordered by
 2 the court from funds the insurer has on deposit with the
 3 department of insurance;

4 (3) upon paying the assessment, costs, and judgment, if any,
 5 from funds on deposit, immediately revoke the license of the
 6 insurer, if the satisfaction causes the deposit remaining to be
 7 less than the amount required by this article; and

8 (4) within ten (10) days after revoking a license, notify the
 9 insurer and the insurer's agents and the clerk of each county in
 10 Indiana of the revocation and the insurer shall be prohibited
 11 from conducting a bail bond business in Indiana until the deposit
 12 has been replenished.

13 (g) The notice mailed by the clerk to the commissioner pursuant
 14 to the terms of subsection (f) shall include:

15 (1) the date on which the defendant originally failed to appear
 16 as provided in the bond;

17 (2) the date of compliance with subsection (b), if compliance
 18 was achieved within three hundred sixty-five (365) days after
 19 the mailing of the notice required by subsection (a)(2);

20 (3) the amount of the bond;

21 (4) the dollar amount of the late surrender fee due;

22 (5) the amount of costs resulting from the defendant's failure to
 23 appear; and

24 (6) if applicable, the dollar amount of the judgment of forfeiture
 25 entered by the court.

26 (h) Any surety on a bond may appeal to the court of appeals as in
 27 other civil cases without moving for a new trial, and on the appeal
 28 the evidence, if any, shall be reviewed.

29 (i) Fifty percent (50%) of the late surrender fees collected under
 30 this chapter shall be deposited in the police pension trust fund
 31 established under IC 36-8-10-12 and the remaining fifty percent
 32 (50%) shall be deposited in the county extradition fund established
 33 under IC 35-33-14.

34 SECTION 6. IC 27-10-2-17 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2008]: **Sec. 17. If a bail agent accepts a**
 37 **premium by means of a credit card transaction, the person using**
 38 **the credit card shall pay, in addition to the premium, any credit**
 39 **card service fee charged by the credit card issuer in relation to**
 40 **the credit card transaction.**

41 SECTION 7. IC 35-33-8-3.2, AS AMENDED BY P.L. 1-2007,
 42 SECTION 226, IS AMENDED TO READ AS FOLLOWS
 43 [EFFECTIVE JULY 1, 2008]: Sec. 3.2 (a) **Except as provided in**
 44 **subsection (b),** a court may admit a defendant to bail and impose any
 45 of the following conditions to assure the defendant's appearance at
 46 any stage of the legal proceedings, or, upon a showing of clear and
 47 convincing evidence that the defendant poses a risk of physical
 48 danger to another person or the community, to assure the public's
 49 physical safety:

(1) Require the defendant to:

- (A) execute a bail bond with sufficient solvent sureties;
- (B) deposit cash or securities in an amount equal to the bail;
- (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail; **or**
- ~~(D) post a real estate bond, or~~
- ~~(E)~~ **(D)** perform any combination of the requirements described in clauses (A) through ~~(D)~~ (C).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection ~~(d)~~ (e).

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection ~~(d)~~ (e). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b). **(c). IC 27-10-2-15 applies to a deposit made under this subdivision.**

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the

supervision of a probation officer or pretrial services agency,
the court shall determine whether the defendant must pay the
pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or
organization responsible for supervising the defendant and
assisting the defendant in appearing in court. The supervisor shall
maintain reasonable contact with the defendant in order to assist the
defendant in making arrangements to appear in court and, where
appropriate, shall accompany the defendant to court. The
supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the
risk exists.

(8) Impose any other reasonable restrictions designed to assure the
defendant's presence in court or the physical safety of another
person or the community.

(b) Within thirty (30) days after disposition of the charges against the
defendant, the court that admitted the defendant to bail shall order the
clerk to remit the amount of the deposit remaining under subsection
(a)(2) to the defendant. The portion of the deposit that is not remitted
to the defendant shall be deposited by the clerk in the supplemental
public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the
indictment or information is dismissed or the defendant is acquitted
or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit
required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under
subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected
under this subsection to the board of trustees of the public employees'
retirement fund for deposit in the special death benefit fund. The fee
required by subdivision (2) is in addition to the administrative fee
retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may
collect the bail posted under this section. The county sheriff shall
remit the bail to the clerk of the court by the following business day
and remit monthly the five dollar (\$5) special death benefit fee to the
county auditor.

(f) When a court imposes a condition of bail described in subsection
(a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form
prescribed or approved by the division of state court

a d m i n i s t r a t i o n

1 with the clerk.

2 SECTION 8. IC 35-33-8-7 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. (a) If a defendant:

4 (1) was admitted to bail under section 3.2(a)(2) of this chapter;
5 and

6 (2) has failed to appear before the court as ordered;
7 the court shall, **except as provided in subsection (b) or section**
8 **8(b) of this chapter, declare the bond forfeited and** issue a
9 warrant for the defendant's arrest.

10 (b) In a criminal case, if the court having jurisdiction over the
11 criminal case receives written notice of a pending civil action or
12 unsatisfied judgment against the criminal defendant arising out of the
13 same transaction or occurrence forming the basis of the criminal
14 case, funds deposited with the clerk of the court under section
15 3.2(a)(2) of this chapter may not be declared forfeited by the court,
16 and the court shall order the deposited funds to be held by the clerk.
17 If there is an entry of final judgment in favor of the plaintiff in the
18 civil action, and if the deposit and the bond are subject to forfeiture,
19 the criminal court shall order payment of all or any part of the
20 deposit to the plaintiff in the action, as is necessary to satisfy the
21 judgment. The court shall then order the remainder of the deposit, if
22 any, and the bond forfeited.

23 (c) Any proceedings concerning the bond, or its forfeiture, judgment,
24 or execution of judgment, shall be held in the court that admitted the
25 defendant to bail.

26 (d) After a bond has been forfeited under subsection (b), the clerk
27 shall mail notice of forfeiture to the defendant. In addition, unless the
28 court finds that there was justification for the defendant's failure to
29 appear, the court shall immediately enter judgment, without pleadings
30 and without change of judge or change of venue, against the
31 defendant for the amount of the bail bond, and the clerk shall record
32 the judgment.

33 (e) If a bond is forfeited and the court has entered a judgment under
34 subsection (d), the clerk shall transfer to the state common school
35 fund:

36 (1) any amount remaining on deposit with the court (less the
37 fees retained by the clerk); and

38 (2) any amount collected in satisfaction of the judgment.

39 (f) The clerk shall return a deposit, less the administrative fee, made
40 under section 3.2(a)(2) of this chapter to the defendant, if the
41 defendant appeared at trial and the other critical stages of the legal proceedings.

42 SECTION 9. IC 35-33-8-8 IS AMENDED TO READ AS
43 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) If a defendant
44 was admitted to bail under section 3.2(a) of this chapter and the
45 defendant has ~~knowingly and intentionally~~ failed to appear before the
46 court as ordered, the court:

47 (1) shall issue a warrant for the defendant's arrest;

48 (2) may not release the defendant on personal recognizance; and

49 (3) may not set bail for the rearrest of the defendant on the

1 warrant at an amount that is less than the greater of:
2 (A) the amount of the original bail; or
3 (B) two thousand five hundred dollars (\$2,500);
4 in the form of a bond issued by an entity defined in IC 27-10-1-
5 7 or the full amount of the bond in cash.
6 (b) In a criminal case, if the court having jurisdiction over the
7 criminal case receives written notice of a pending civil action or
8 unsatisfied judgment against the criminal defendant arising out of the
9 same transaction or occurrence forming the basis of the criminal
10 case, funds deposited with the clerk of the court under section
11 3.2(a)(2) of this chapter may not be declared forfeited by the court,
12 and the court shall order the deposited funds to be held by the clerk.
13 If there is an entry of final judgment in favor of the plaintiff in the
14 civil action, and if the deposit is subject to forfeiture, the criminal
15 court shall order payment of all or any part of the deposit to the
16 plaintiff in the action, as is necessary to satisfy the judgment. The
17 court shall then order the remainder of the deposit, if any, forfeited
18 Renumber all SECTIONS consecutively.

(Reference is to ESB27 as printed February 22, 2008.)

Representative SAUNDERS